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Committee against Torture

Observations of the Committee against Torture on the revision of the Standard Minimum Rules for the Treatment of Prisoners

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I. Introduction

1. In resolution 65/230 of 21 December 2010, the General Assembly requested the Commission on Crime Prevention and Criminal Justice to establish an open-ended intergovernmental expert group to exchange information on best practices, national legislation and existing international law, and on the revision of the existing Standard Minimum Rules for the Treatment of Prisoners, so that they reflected recent advances in correctional science and best practices. The Economic and Social Council, in resolution 2012/13 of 25 July 2013 and the General Assembly, in resolution 67/188, subsequently took note of the nine areas identified for review by the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners at its first meeting held in Vienna from 31 January to 2 February 2012[1] and of the recommendations made by the Expert Group at its second meeting held in Buenos Aires from 11 to 13 December 2012.[2] In resolution 2012/13, the Economic and Social Council extended the mandate of the Expert Group and invited Member States to submit proposals for revision of the Standard Minimum Rules in the nine areas identified for the next meeting of the Expert Group, which would take place in Brazil in January 2014. Civil society and relevant United Nations bodies were also encouraged to contribute to the process.

2. The Committee against Torture welcomes this opportunity to provide its observations on the procedural standards and safeguards relevant to the prohibition of torture and ill-treatment that should be applied to all cases of deprivation of liberty and that should be taken into account in the process of revising the Standard Minimum Rules in the nine areas identified for review. The present observations derive from the specific provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the jurisprudence of the Committee on issues related to the obligations of States parties under the Convention with respect to persons in detention, as well as from discussions between the members of the Committee.

3. The observations refer to a limited number of issues within the nine areas identified by the Expert Group and will, as such, not cover all aspects that could be raised in the context of detention. The Committee will further engage in the ongoing discussion with regard to this important set of standards on the treatment of persons in detention, with a special emphasis on the absolute prohibition of torture and other ill-treatment.

4. The absolute and non-derogable character of the prohibition of torture is a peremptory *jus cogens* norm.[3] Other essential principles underpin the absolute prohibition of torture in the Convention, such as the obligation of States to prevent torture and ill-treatment;[4] to investigate when allegations are raised; to prosecute and sanction those responsible for such acts;[5] and to provide adequate redress to victims.[6] The Convention further indicates that there is no justification for torture and that no exceptional circumstances whatsoever can be invoked to justify such acts, including orders from superiors or situations of emergency.[7] Moreover, the Committee has made clear, in paragraph 18 of its general comment No. 2 (2007) on the implementation of article 2 by States parties, that "where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to

[1] See E/CN.15/2012/18.

[2] See E/CN.15/2013/23.

[3] See article 2 of the Convention and general comment No. 2 (2007) of the Committee on Torture on the implementation of article 2 by States parties, para. 1.

[4] Articles 2 and 16 of the Convention.

[5] Article 12 of the Convention.

[6] Article 14 of the Convention.

[7] Article 2, para. 2, of the Convention.

exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts".

5. Those absolute and basic principles laid down in the Convention and further developed in the concluding observations of the Committee, in its decisions and views concerning individual communications and in the general comments adopted by the Committee (especially general comment No. 2 and general comment No. 3 (2012) on the implementation of article 14 by States parties), must be respected at all times and particularly in any situation where a person is deprived of his or her liberty. The Committee recommends, therefore, that those basic principles should be taken into consideration in any revision of the Standard Minimum Rules. The Committee affirms that any changes to the Rules should not lower any of the existing standards but should rather improve them, a position also articulated by the Economic and Social Council. Those standards must respect and uphold non-derogable human rights, including the absolute prohibition of torture, and reflect recent advances in prison administration and restorative justice.

II. Observations of the Committee on the text of the Standard Minimum Rules

A. Scope and application of the Standard Minimum Rules

6. The Committee has made clear in its concluding observations and general comments that the obligation of States parties to prohibit, prevent and redress torture and ill-treatment applies in all contexts of custody or control, including in detention facilities under the *de facto* effective control of a State,[8] and in contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.[9] The absolute prohibition of torture and ill-treatment applies at all times and in all places and no exceptional circumstances whatsoever may be invoked to justify such acts, including orders from superiors or situations of emergency.[10] This includes a state of war, or threat thereof, or internal political instability. It also includes any threat of terrorist acts or violent crime, or any religious or traditional justification that would violate this prohibition.

7. The Standard Minimum Rules should apply mutatis mutandis to all situations of detention, i.e., it applies unless there is a *lex specialis* that establishes a norm of higher standard, e.g., in the case of detention in armed conflict (see paragraph 2 of article 2 and paragraph 2 of article 16 of the Convention). The remarks that the Committee provides in this document regarding the Standard Minimum Rules refer to its current scope under rule 4 (1) and rules 94 and 95, although the obligation of States, as laid down in the Convention and consistently applied by the Committee, extends to all contexts in which a person is deprived of his or her liberty. Accordingly, the scope of the Rules should be expanded, properly reflecting all legal obligations under the Convention. In the present text, when the Committee refers to prisoners or detained persons, it will imply applicability to any person under any form of detention or imprisonment, criminal or civil, untried or convicted, under rules 4 (1) and 95.

8. The Committee recommends that these observations be taken into consideration in the revision of the Standard Minimum Rules. The Committee also recommends the inclusion of a new preamble, or an annex to the Rules, containing a list of other

[8] See general comment No. 2, para 16, and CAT/C/USA/CO/2, 2006, para. 15.
[9] General comment No. 2, para 15.
[10] Article 2, para. 2, of the Convention.

international treaties and rules that complement the Rules with regard to the treatment of detained persons and a specific reference to the Convention.

9. The Committee reiterates that, as stated in its general comment No. 2, and reiterated by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/68/295, paras. 29–33), States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors and others acting in an official capacity, or acting on behalf of the State. Where State authorities or others acting in an official capacity or under colour of law know, or have reasonable grounds to believe, that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the provisions of the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise, responsible under the Convention for consenting to or acquiescing in such impermissible acts, for example in the case of inter-prisoner violence.

B. Respect for the inherent dignity of prisoners and their value as human beings

Non-discrimination

10. The Committee reiterates that the principle of non-discrimination is a basic and general principle in the protection of human rights, which is fundamental to the interpretation and application of the Convention.[11] The Committee considers that rule 6 of the Standard Minimum Rules should make clear that States must ensure the application of the rules to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, gender identity, mental or other disability, health status, economic or indigenous status, the reason for which a person is detained, including persons accused of political offences or terrorist acts, asylum seekers and refugees, or others under international protection, or any other grounds of possible discrimination.[12]

Explicit prohibition of torture and ill-treatment

11. As indicated above, since the adoption of the Convention the absolute and non-derogable character of the prohibition of torture has become accepted as a matter of customary international law.[13] Article 2 of the Convention called upon States to adopt effective measures to prevent torture, including preventing public authorities or others acting in an official capacity or under colour of law, including personnel in detention centres that are privately owned or run, from directly committing, instigating, inciting, encouraging, acquiescing in, or otherwise participating or being complicit in any acts of torture or ill-treatment.[14]

12. Those principles should be clearly set out as rules of general application in the Standard Minimum Rules as an extension of current rule 6.

Protection against violence

13. States should take the necessary steps to prevent violence in prisons and places of detention, including sexual violence by law enforcement and penitentiary personnel and by

[11] See general comment No. 2, para. 20, and general comment No. 3, para. 32.
[12] General comment No. 2, para. 21, and general comment No. 3, para. 32.
[13] General comment No. 2, para 1.
[14] Ibid., para.17.

other inmates.[15] To prevent torture, sexual violence or ill-treatment or harassment of persons in custody and to reaffirm every person's inherent rights to security of person and dignity, detained persons should be separated by gender, at least for the purpose of housing and personal functions, and protection against violence and harassment should be established in the rules and practices of detention facilities.[16]

14. In cases where a person is threatened with violence, or has been victimized due to actual or perceived sexual orientation or gender identity, the person should be provided with appropriate protection and a respectful environment without being removed from the general prison population, unless it is with his or her consent. The use of same-sex guards in contexts where a detainee is vulnerable to attack, in scenarios that involve close personal contact, or that involve the privacy of the detainee, is also a preventative measure.

15. Providing a sufficient number of prison staff trained in the management of violence amongst prisoners[17] and in the identification and documentation of all forms of torture or ill-treatment, including sexual violence, is also essential to preventing violence in prisons. States should also monitor and document incidents of violence in prisons, with a view to revealing the root causes and designing appropriate prevention strategies.[18]

C. Medical and health services

16. The Committee considers the right to an independent medical examination as a fundamental legal safeguard from the moment of deprivation of liberty.[19] Prisoners should be able to have prompt access to an independent doctor at any time without such access being conditional on the permission of, or a request to, officials and irrespective of the detention regime.[20] The health-care service in prison should be so organized that requests to consult a doctor can be met without undue delay.

17. Access to an independent doctor is of particular importance in the context of complaints and allegations of torture or ill-treatment, where there may be a need or request for assessment and documentation of injuries, or other health-related consequences stemming from torture or ill-treatment, including forms of sexual violence and abuse. Qualified medical personnel trained in and applying the provisions of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) are required and should be available in places where persons are kept who have been deprived of their liberty.[21]

18. Upon admission, every prisoner should be examined by a health professional as soon as possible for a general assessment of his or her health and the need for treatment and/or care in relation to trauma-related problems, the risk of, or propensity to commit, suicide, substance abuse, or other aspects of relevance to his or her health. That examination is also essential to identify and document injuries or other health-related consequences stemming from torture or ill-treatment. The Committee has indicated that States should ensure that injuries observed during the medical screening of prisoners upon admission, or thereafter by medical staff, are fully recorded, including information on the consistency between the allegations made and the injuries observed.[22]

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[15] See CAT/C/BOL/CO/2, para 18, CAT/C/ARM/CO/3, para 19, and CAT/C/MEX/CO/5-6, para 19.

[16] See, for example, CAT/C/KHM/CO/2, para. 15, and CAT/C/PHL/CO/2, para. 18.

[17] CAT/C/IRL/CO/1, para.15.

[18] CAT/C/MNE/CO/1, para 15.

[19] See, for example, CAT/C/JPN/CO/2, para. 10, CAT/C/TJK/CO/2, para.8, CAT/C/KAZ/CO/2, para. 9, and CAT/C/KHM/CO/2, para.14.

[20] See, for example, CAT/C/TJK/CO/2, para. 8, and CAT/C/TUR/CO/3para.11.

[21] See, for example, CAT/C/KWT/CO/2, para. 18.

[22] See, for example, CAT/C/PRT/CO/5-6, para. 9, and CAT/C/MEX/CO/5-6, para 17.

19. Whenever injuries are indicative of ill-treatment, a report should be sent promptly by the medical staff to the prosecutorial or judicial authorities and the prison inspection services.[23] States should provide medical and psychosocial services for victims in the direct aftermath of torture and as full a rehabilitation process as possible, which may include a wide range of interdisciplinary measures, such as medical, physical and psychological rehabilitation services, reintegration and social services, vocational training and education.[24]

20. All medical examinations of prisoners should be conducted out of the hearing and, whenever the security situation allows, out of the sight of prison officers, and medical records should be made available to the prisoner concerned and to his or her lawyer upon request.[25] The Committee considers that these principles should be taken into consideration in the new paragraph to be added to rule 24.

21. Medical confidentiality should be observed in prisons and places of detention in the same way as in the community at large. Keeping the medical files of prisoners should be the responsibility of the doctor. In the event of a transfer from one facility to another, the file should be forwarded according to regular confidential procedures to the doctors in the receiving establishment. The confidentiality of medical data persists beyond the transfer and/or release of an inmate.

22. A doctor in a prison or place of detention acts as a patient's personal doctor. Consequently, in the interests of safeguarding the doctor-patient relationship, he or she should never be asked to certify, nor participate in certifying, that a prisoner is fit to undergo punishment.

23. The Committee calls for rule 25 to be amended to clarify that medical personnel must not, under any circumstances, engage, actively or passively, in acts which may constitute participation, complicity or acquiescence in, or incitement or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

24. The Committee has recommended on numerous occasions that States ensure that there are sufficient medical professionals, including mental health professionals, in places of detention.[26] The Committee urges that rule 22 should be amended to indicate that health care in prisons should be available and accessible to all prisoners, without discrimination and without cost. A prison health-care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facilities, in order to fulfil the basic needs of prisoners.

25. The health-care services should include somatic and mental health care, including specialized services for persons with mental illnesses whether of an either acute or longer term character.[27] The State should also adopt all necessary measures to protect detainees from contracting tuberculosis, hepatitis C and HIV/AIDs.[28]

26. The Committee proposes that rule 23 (1) be clarified to provide that, beyond prenatal and postnatal care, a broad range of gender-specific health-care services should be available to women prisoners, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

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[23] Ibid.

[24] See general comment No.3, paras. 13 and 14.

[25] See, for example, CAT/C/AUT/CO/3, para. 13, CAT/C/GHA/CO/1, para. 10, CAT/C/PRT/CO/5-6, para. 9, and CAT/C/MEX/CO/5-6, para 17.

[26] See, for example, CAT/C/PRY/CO/4-6, para. 19, CAT/C/PER/CO/5-6, para.10, and CAT/C/GRC/CO/5-6, para. 14.

[27] See, for example, CAT/C/JPN/CO/2, para.13.

[28] CAT/C/ETH/CO/1, para. 26.

Psychiatric care

27. A detained person with a diagnosed mental illness should be kept and cared for in a hospital facility, which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.

28. The health-care services should be organized in close relationship with the general health administration of the State, but also in collaboration with the health-care system in the community to which the person will return upon release, in order to ensure continuity and follow-up during the challenging period following imprisonment.

29. The health-care services and the professionals providing health care in prisons should operate with full clinical independence and according to internationally accepted professional and ethical standards, in particular with regard to the autonomy of prisoners, their informed consent and the confidentiality of their information in all matters relating to health.

30. A medical file should be compiled for each patient, containing diagnostic information and an ongoing record of the patient's state of health and of any special examinations he or she has undergone.

D. Disciplinary action and punishment

Body searches

31. The Committee has recommended that body searches of both visitors and detained persons should be strictly regulated and limited, to ensure that they are conducted in private in a way that is the least intrusive and most respectful of the integrity of the individual, by trained individuals and using alternatives whenever possible, such as electronic detection scanning methods.[29]

Solitary confinement

32. As regards rule 32, the Committee's long-standing recommendation has been that solitary confinement might constitute torture or inhuman treatment and should be regulated as a measure of last resort to be applied in exceptional circumstances, for as short a time as possible and under strict supervision, including being subject to judicial review.[30] Indefinite solitary confinement is prohibited. Solitary confinement should be prohibited as a punishment for juveniles, prisoners with psychosocial and/or intellectual disabilities[31] and others in situations of special vulnerability, including pregnant women, women with infants and breastfeeding mothers.

33. Solitary confinement should also be prohibited for prisoners on life sentences, prisoners sentenced to death and pretrial detainees. The Committee has recommended that there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period allowed.[32] Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.

34. The Committee has further recommended that meaningful social contact for detainees while in solitary confinement should be ensured.[33] Qualified medical personnel

[29] See, for example, CAT/C/GRC/CO/5-6, para. 16, CAT/C/FRA/CO/4-6, para. 28, and CAT/C/HKG/CO/4, para. 10.

[30] See, for example, CAT/C/JPN/CO/2, para. 14, and CAT/C/PRT/CO/5-6, para. 12.

[31] CAT/C/PRT/CO/5-6, para. 12.

[32] Ibid.

[33] See, for example, CAT/C/JPN/CO/2, para. 14, and CAT/C/PRT/CO/5-6, para. 12.

should regularly monitor the physical and mental condition of every detainee after a period in solitary confinement has been imposed and should also provide such medical records to the detainees and their legal counsel upon request.[34]

Restraints

35. The Committee urges that rule 33 be modified so that it reflects the following principles and minimum standards.

36. The guiding principle in the matter of restraints and the enjoyment of rights generally is that the status, penalty, legal condition or disability of an individual cannot be a reason for automatically imposing restraints. The use of restraints must always be justified and subject to strict requirements of proportionality and timeliness. The burden of proof in this matter is on the authorities. The use of restraints should be avoided or applied as a measure of last resort, when all other alternatives for control have failed and for the shortest possible time, with a view to minimizing their use in all establishments and, ultimately, abandoning them.[35] When it is absolutely necessary to resort to means of restraint in a prison setting, basic safeguards against possible abuse include regulations governing the use of means of restraint (reason, conditions and procedure) that are in line with human rights standards and the rigorous recording of every application of these means.[36] The equipment used should be properly designed to limit harmful effects, discomfort and pain during restraint and staff must be trained in the use of the equipment.[37]

37. Immobilization should only be used as a last resort to prevent the risk of harm to the individual concerned or others, according to strict written guidelines and by trained staff, when all other reasonable options would fail to contain those risks. Persons subject to immobilization should receive full information on the reasons for the intervention. Immobilization should never be used as a punishment or to compensate for shortages of trained staff. The duration should be for the shortest possible time (usually minutes rather than hours). Restraint for periods of days at a time cannot be justified and could amount to either torture or ill-treatment.

38. The Committee has also concluded that electrical discharge weapons (Tasers) should not be part of the general equipment of custodial staff in prisons or any other place of deprivation of liberty.[38]

Other disciplinary punishments

39. The Committee rejects the imposition of additional and severe punishments on prisoners serving life sentences, such as handcuffing when they are outside their cells and segregation.[39]

40. The Committee considers that the reference to "reduction of diet" as a punishment in rule 32 (1) should be deleted; reduction of diet or water should be absolutely prohibited, as it would breach the requirements of the Convention itself.

41. Prisoners facing disciplinary or other charges while in detention should be formally guaranteed due process rights, including being informed in writing of the charges against them; being heard in person; being able to call witnesses and examine evidence given against them; being provided with a copy of any disciplinary decision concerning them and an oral explanation of the reasons for the decision and the modalities for lodging an appeal; and being able to appeal to an independent authority against any sanctions imposed.

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[34] Ibid.

[35] See, for example, CAT/C/JPN/CO/2, para. 22, and CAT/C/DEU/CO/5, para. 16.

[36] See, for example, CAT/C/JPN/CO/2, para. 22.

[37] See, for example, CAT/C/DEU/CO/5, para.16.

[38] See, for example, CAT/C/BEL/CO/3 para. 26, and CAT/C/PRT/CO/5-6, para. 15.

[39] See, for example, CAT/C/BGR/CO/4-5, para. 24.

E. Investigation of all deaths in custody, as well as signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners

42. The Committee has on many occasions recommended that all incidents of death in custody must be investigated promptly, thoroughly and impartially, and that the medical services and the family of the deceased should be informed of the outcome.[40]

43. Article 12 of the Convention imposes an obligation on States to ensure that the competent authorities proceed to prompt, thorough and impartial investigations whenever there are reasonable grounds to believe that an act of torture, or other inhuman or degrading treatment or punishment, has been committed in the territory of the State as the result of its actions or omissions.[41] The Committee recommends that a new rule 54 bis include the obligation for prison administrations, or other competent bodies, to initiate prompt and impartial investigations in such circumstances, particularly in prison settings, irrespective of whether a complaint has been received. Such an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol.[42]

44. Whenever there are reasonable grounds to believe that an official has committed acts of torture or ill-treatment, he or she should be suspended from his or her duties immediately and remain so throughout the investigation, particularly if there is any risk that he or she might otherwise be in a position to repeat the alleged act or interfere with the investigation.[43] Moreover, persons suspected of having committed torture or ill-treatment should be prosecuted by judicial or prosecutorial authorities and, if found guilty, should be punished with appropriate sentences that are commensurate with the gravity of their acts and victims should be afforded appropriate redress.[44]

45. The Committee considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment, or for consent or acquiescence therein, be fully investigated by competent, independent and impartial prosecutorial and judicial authorities.[45] This is particularly relevant with regard to prison violence, including sexual violence, by prison staff and by inmates on other detained persons. Persons who resist what they view as unlawful orders or who cooperate in the investigation of torture or ill-treatment, including by superior officials, should be protected against retaliation of any kind.[46]

F. Protection and special needs of vulnerable groups deprived of their liberty

46. The Committee recommends the addition of a paragraph to rule 6 which would apply to prisoners with special needs or in situations of vulnerability, such as victims of trafficking, foreigners, women, in particular pregnant women, children, disabled persons, lesbian, gay, bisexual and transgender persons and members of ethnic, racial, religious, age- or health-related groups and other groups among the population who are vulnerable.

47. The special needs of at-risk groups should be respected fully by, for example, providing an independent medical examination or access to counsel upon request.

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[40] See, for example, CAT/C/UZB/CO/3, para. 11, and CAT/C/AZE/CO/3, para. 13.

[41] General comment No. 3, para. 23.

[42] Ibid., para. 25.

[43] See, for example, CAT/C/BOL/CO/2, para.11, CAT/C/GTM/CO/5-6, para. 9, and CAT/C/PRT/CO/5-6, para. 9.

[44] Ibid. and see article 4, para. 2, of the Convention.

[45] See general comment No. 2, para. 26.

[46] Ibid.

G. The right to access legal representation

48. The Committee considers, and has consistently reiterated, that access to, and the assistance of, a lawyer and the provision of legal aid, whenever necessary, from the moment of deprivation of liberty throughout the period of detention, is one of the relevant fundamental legal safeguards to prevent torture and ill-treatment during detention and ensure fair legal proceedings, in conformity with the Basic Principles on the Role of Lawyers. Detained persons should also be formally guaranteed other due process rights, including being informed in writing of the charges against them; being tried without undue delay; being heard in person; being able to examine, or have examined, witnesses and the evidence against them; having the free assistance of an interpreter; not being compelled to testify or confess to guilt; being provided with a copy of the judgment and an oral explanation of the reasons for the conviction and the modalities for lodging an appeal; and being able to appeal to an independent authority against the conviction.[47]

49. Access to legal representation entails prompt confidential access to, and consultations in private with, an independent lawyer or a counsel of the detainee's own choice, in a language he or she understands, from the moment of deprivation of liberty and throughout the period of detention, but especially during the process of interrogation, investigation and questioning.

50. A functioning legal assistance mechanism, if and when necessary, permits detainees the right to prompt access to a lawyer. For all those detained that cannot afford it, this guarantees the effectiveness of fundamental legal safeguards to prevent torture and ill-treatment, as provided in articles 2 and 11 of the Convention, and other rights, such as the ability to lodge complaints under article 13, as the Committee recalled in paragraph 13 of its general comment No.2.[48]

51. This right must be ensured in practice for every person deprived of liberty, including those detained under administrative law. In addition to the right to a doctor and a medical examination, it also includes, in particular, the right of detainees to notify a member of their family, or another appropriate person of their own choice, in a timely manner; to be informed of their rights in a language they understand, including the grounds for their detention; to be brought promptly before a judge; and the ability to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus.

52. The official registration of detainees is another key element for the prevention of torture and ill-treatment, in conformity with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which should be made available for consultation upon the request of the detainee's lawyer. Registration should contain, amongst other elements, information on the identity of the detainee, the date, time and place of detention, the identity of the authority that detained the person, the grounds for detention, the date and time of admission to the detention facility, the state of health of the detainee upon admission and any changes thereto, the time and place of interrogation, with the names of all interrogators present, and the date and time of release or transfer to another detention facility. Access by the detainee to his or her lawyer must also be recorded in the registry of the premises where the detainee is being held. The Committee recommends that these considerations be taken into account in the revision of rules 35 and 37 of the Standard Minimum Rules.

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[47] See article 14 of the International Covenant on Civil and Political Rights.

[48] See also the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in resolution 67/187.

H. Complaints and independent inspections

Complaints

53. Article 13 of the Convention indicates that States should ensure that any individual who alleges that he or she has been subjected to torture has the right to complain to, and to have his or her case promptly, effectively and impartially examined by, the competent authorities. The Committee thus recommends modifying rule 36 to conform to this principle. The Committee has also recommended establishing a central and accessible mechanism to receive complaints of torture or ill-treatment and a centralized register of complaints that includes information on the corresponding investigations, trials and criminal and/or disciplinary penalties imposed.[49]

54. Complaints mechanisms should be made known and accessible to the public, including to persons deprived of their liberty through, for example, telephone hotlines or confidential complaints boxes in detention facilities, and to persons belonging to vulnerable or marginalized groups, including those who may have limited communication abilities.[50] States should ensure the confidentiality of these mechanisms.

55. Article 13 of the Convention also provides that steps should be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint, or any evidence given. Protective measures including relocation, on-site security, hotlines and judicial orders of protection to prevent violence and harassment against complainants, witnesses, or close associates of such parties, should be available and consistently enforced, free of discrimination. The Committee recommends that a revision of rule 36 should reflect these important aspects.

56. The Committee recommends adding a subparagraph to rule 36 that addresses the entitlement of prisoners to bring their request or complaint before a judicial or other independent and impartial authority, in case the initial request or complaint is rejected, or in case of undue delay.

Independent inspections

57. Regular visits should be carried out to all prisons and places of detention by a body independent of the authority in charge of the administration of places of detention or imprisonment, with the authority to receive and investigate the complaints of prisoners and to visit the premises in order to monitor, among other things, all forms of violence in custody, including sexual violence against both men and women, and all forms of inter-prisoner violence, including proxy violence that occurs with the acquiescence of officials within the prison system. During such visits, the inspectors should make themselves "visible" to the prison authorities, the staff and the prisoners. They should not limit their activities to seeing prisoners who have expressly requested to meet them, but should take the initiative of visiting the detention areas of the establishments they are monitoring and entering into contact with the inmates. The inspection body should ensure that action is taken to follow up on the results of the monitoring process and that the findings are made public, excluding any personal data concerning a prisoner, unless he or she has given his or her express consent.[51]

58. The inspection body should also be able to carry out unannounced visits in order to prevent torture and other ill-treatment. The State should also ensure that forensic doctors

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[49] See, for example, CAT/C/EST/CO/5, para. 20, CAT/C/BOL/CO/2, para. 10, and CAT/C/PRT/CO/5-6, para. 10.

[50] General comment No. 3, para. 23.

[51] See, for example, CAT/C/MAR/CO/4, para. 18 and CAT/C/TJK/CO/2, para. 14.

and, when needed, female inspectors trained to detect signs of torture or other ill-treatment, including sexual violence, are present during those visits.[52]

59. The independent inspection bodies should ensure that gender-sensitive measures and others designed to protect at-risk populations are in place to protect the victims, where appropriate.[53] Effective measures to ensure the safety of such persons should include human rights officers within police forces and units of officers specifically trained to handle cases of sexual and gender violence, domestic violence, and/or violence against ethnic, religious, national or other minorities. They may also include inspections by appropriate non-governmental organizations or national preventive mechanisms.[54]

60. The Committee considers that the powers of independent inspection mechanisms set out in rule 45 should also include access to all information on the numbers of both persons deprived of their liberty and places of detention, including locations, and to all information relevant to the treatment of persons deprived of their liberty, including the conditions of detention and which persons deprived of their liberty should be interviewed. They should also include the authority to conduct private and fully confidential interviews with persons deprived of their liberty in the course of visits by the independent inspectors.

I. Training of relevant staff to implement the Standard Minimum Rules

61. Article 10 of the Convention requires that education and information regarding the prohibition of torture and ill-treatment be fully included in the training of civil or military law enforcement personnel, medical personnel, including those working in prisons, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment. The Committee recommends that prison authorities give high priority to the development of training for prison staff, both initial and ongoing. Such training should include, as a minimum, the basic principles of the Convention and of the Istanbul Protocol, in order to facilitate the monitoring, documentation and investigation of torture and ill-treatment, focusing on both physical and psychological traces.[55]

62. The training programme should prepare persons who may be involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention or imprisonment to handle appropriately the challenges related to members of groups made vulnerable and ensure appropriate and respectful treatment of those groups, such as victims of trafficking, foreigners, women, children, disabled persons and members of ethnic, racial, religious, age- or health-related, transgender and other diverse groups among the population.[56] The Committee has consistently recommended that States provide gender sensitivity training, especially in the areas of crimes that typically or disproportionately affect women including, but not limited to, rape and sexual violence, trafficking and domestic violence.[57] States should ensure that training programmes for medical experts and staff in places of detention deal specifically with the identification and documentation of all forms of torture or ill-treatment, including sexual and gender violence, and are in keeping with the Istanbul Protocol. More specifically, medical personnel should be trained in appropriate forensic and medical techniques, including gender-sensitive measures, for treating torture victims.

63. The Committee also recommends that considerable emphasis should be placed on the acquisition of interpersonal communication skills by prison staff. Building positive

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[52] See, for example, CAT/C/MAR/CO/4, para. 18.

[53] See, for example, CAT/C/KOR/CO/2, para. 3 (f).

[54] See, for example, CAT/C/TJK/CO/2, para. 14, and CAT/C/MAR/CO/4, para. 18.

[55] See, for example, CAT/C/MRT/CO/1, para. 17, and CAT/C/JPN/CO/2, para. 17.

[56] See article 10 of the Convention, CAT/C/KWT/CO/2, para. 18, and CAT/C/IRL/CO/1, para. 30.

[57] See, for example, CAT/C/KWT/CO/2, para. 18, and CAT/C/ARM/CO/3, para. 18.

relations with prisoners should be recognized as a key feature of a prison officer's vocation. To obtain personnel of the right calibre, the authorities must be prepared to invest adequate resources into the process of recruitment and training and to offer adequate salaries.

J. The replacement of outdated terminology

64. The Committee considers that the heading in the Minimum Standard Rules "Insane and mentally abnormal prisoners", the term "insane" in rule 82 (1), the phrase "prisoners who suffer from other mental diseases or abnormalities" in rule 82 (2) and the text "treatment of states of mental abnormality" in rule 22 (1) fall short of today's standards and acceptable terminology and should refer to "psychosocial disability", including both long-term and acute psychiatric disorders, throughout the text. A reference could also be made to "persons with intellectual disability", as this is not considered an illness from which a person recovers, as will be the case with most of the psychosocial disabilities, including psychiatric illnesses, as defined and described in the diagnostic manuals.